

DECISION

Dispute Codes OPR

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 26, 2010 at 11:45 a.m. the Landlord served each Tenant with the Notice of Direct Request Proceeding via registered mail. Canada Post receipts were provided in the Landlord's documentary evidence and the Tenants are deemed to have received the Direct Request documents on March 31, 2010, five days after they were mailed, in accordance with section 90 of the Act. Based on the written submissions of the Landlord, I find that the Tenants have been served with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent in accordance with section 55 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each Tenant;
- A copy of a residential tenancy agreement which was signed by the parties on May 22, 2009 for a fixed term tenancy beginning June 1, 2009 and switching to a month to month tenancy after May 31, 2010, for the monthly rent of \$700.00 due on 1st of the month and a deposit of \$350.00 was paid on May 19, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, March 9, 2010, with an effective vacancy date of March 23, 2010 due to \$690.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the Tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted to the Tenants' door on

March 9, 2010 at 4:45 p.m., in the presence of a witness. The Tenants are deemed to have received the 10 Day Notice on March 12, 2010, three days after it was posted to the door in accordance with section 90 of the Act.

Analysis

Order of Possession - I have reviewed all documentary evidence and accept that the Tenants have been served with notice to end tenancy as declared by the Landlord. The notice is deemed to have been received by the Tenants on March 9, 2010 and the effective date of the notice is March 19, 2009 pursuant to section 90 of the Act. I accept the evidence before me that the Tenants have failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the Act.

Based on the foregoing, I find that the Tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice and I approve the Landlord's request for an Order of Possession.

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession, a Monetary Order, an Order to retain the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 22, 2009 the Landlord served each Tenant with the Notice of Direct Request Proceeding in person at the rental unit. Based on the written submissions of the Landlord, I find that the Tenants have been served with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a Monetary Order for unpaid rent; to keep all or part of the security deposit and to recover the cost of the filing fee, pursuant to sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each Tenant;

- A copy of a residential tenancy agreement which was signed by the parties on February 28, 2007 for a fixed term tenancy beginning April 01, 2007 and switching to a month to month tenancy after September 31, 2007 (written as noted on the agreement) for the monthly rent of \$975.00 due on 1st of the month and a deposit of \$487.50 was paid on or before February 28, 2007; and
- A copy of a notice of rent increase effective April 1, 2008 raising the rent from 975.00 to \$1,011.00; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, November 2, 2009 with an effective vacancy date of November 13, 2009 due to \$1,733.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the Tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted to the Tenants' door on November 2, 2009 at 12 noon in the presence of a witness. The Tenants are deemed to have received the 10 Day Notice on November 5, 2009, three days after it was posted to the door in accordance with section 90 of the Act.

Analysis

Order of Possession - I have reviewed all documentary evidence and accept that the Tenants have been served with notice to end tenancy as declared by the Landlord. The notice is deemed to have been received by the Tenants on November 5, 2009 and the effective date of the notice is November 15, 2009 pursuant to section 90 of the Act. I accept the evidence before me that the Tenants have failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the Act.

I note that the Landlord has included a late payment fee on the 10 Day Notice and must advise the Landlord that late payment fees do not constitute rent and should not be listed on a 10 Day Notice, that being said I do not find that the notice was invalid as a result of this amount being included.

Based on the foregoing, I find that the Tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice and I approve the Landlord's request for an Order of Possession.

The Tenants' security deposit currently held in trust by the Landlord is to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenants**. This order must be served on the Tenants and may be filed in the Supreme Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 12, 2010.

Dispute Resolution Officer